

Title	Appellate Procedure: Allow Parties to File Replies to Answers to Petitions for Review Even if Answers Do Not Raise New Issues (amend Cal. Rules of Court, rules 28(a) and 28.1(d))
Summary	This proposal would amend rules 28(a) and 28.1(d) of the California Rules of Court to permit parties to file replies to answers to petitions for review even if those answers do not raise new issues.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 28(a)(3) of the California Rules of Court provides that the party who filed a petition for review in the Supreme Court may file a reply to the respondent's answer only if that answer raises additional issues for review. Rule 28.1(d) also specifies that a reply to an answer to a petition for review may only address the new issues for review raised in the answer.</p> <p>In practice, however, replies to answers to petitions for review are routinely filed even if the answer does not raise new issues, and these replies are not rejected by the court. Such a reply may prove helpful to the court's understanding of the petition even when the answer does not raise new issues. Based upon a suggestion submitted by the California Academy of Appellate Lawyers, the Appellate Advisory Committee is proposing that rules 28 and 28.1 of the California Rules of Court be amended to reflect the current practice of allowing replies to be filed regardless of whether the answers raise new issues.</p>
	Attachments

Rules 28(a) and 28.1(d) of the California Rules of Court would be amended effective January 1, 2004, to read:

**Rule 28. Petition for review**

**(a) Right to file a petition, answer, or reply**

(1) A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

(2) A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review.

(3) The petitioner may file a reply ~~only if~~ to the answer ~~raises additional issues for review.~~

**(b)–(g) \*\*\***

**Rule 28.1. Form and contents of petition, answer, and reply**

**(a)–(c) \* \* \***

**~~(d)~~ Contents of a reply**

~~A reply, if any, must be limited to addressing additional issues for review raised in an answer.~~

**~~(e)~~(d) Length**

**\* \* \***

**~~(f)~~(e) Attachments and incorporation by reference**

**\* \* \***

**Advisory Committee Comment (2003)**

New rule 28.1 collects in one rule the provisions of former rule 28 governing the form and content of a petition for review, answer, and reply.

1   **Subdivision (b)**

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3   \* \* \*

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5   **Subdivision ~~(e)~~(d).** Subdivision ~~(e)~~(d) states in terms of word count rather than  
6   page count the maximum permissible length of a petition for review, answer, or  
7   reply produced on a computer. This substantive change tracks an identical  
8   provision in revised rule 14(c) governing Court of Appeal briefs and is explained  
9   in the Advisory Committee Comment to that provision.

10  
11   **Subdivision ~~(f)~~(e).** Paragraphs (1) and (2) of subdivision ~~(f)~~(e) restate and simplify  
12   portions of, respectively, the second paragraph of former rule 28(e)(6) and the  
13   third paragraph of former rule 28(e)(5). No substantive change is intended.

14  
15   The first and third paragraphs of former rule 28(e)(5) in effect required parties to  
16   include their points, authorities, and arguments in the bodies of their petitions,  
17   answers, and replies. New rule 28.1~~(f)~~(e) deletes these provisions as superfluous:  
18   the same requirements are imposed by rule 14(a)(1), which is made applicable to  
19   petitions, answers, and replies by new rule 28.1(a).

20  
21   The third paragraph of former rule 28(e)(5) authorized a party to incorporate by  
22   reference portions of a petition, answer, and reply filed by another party in the  
23   same case or filed by any party in "a connected case" in which a petition for  
24   review was pending or had been filed. New rule 28.1~~(f)~~(e)(2) deletes as ambiguous  
25   the term "a connected case" and substitutes the more descriptive phrase, "a case  
26   that raises the same or similar issues," i.e., irrespective of the identity of the  
27   parties. The change is not substantive.